

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT D. AUGUSTINE and RANDALL C. ARNOLD

Appeal No. 2000-0086
Application No. 08/831,603

HEARD: August 14, 2001

Before ABRAMS, FRANKFORT, and PATE, Administrative Patent Judges.
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 26 through 34, 36 through 40, 42 through 78 and 80. Claims 41 and 79 stand objected to. These are all the claims in the application.

The claimed invention is directed to an inflatable thermal blanket. Claim 26, reproduced below, is further illustrative of the claimed subject matter.

26. An inflatable thermal blanket, comprising:

a base sheet with a lower layer of first material and an upper layer of second material;

an overlaying material sheet attached to the upper layer of the base sheet at a plurality of locations to form an inflatable structure;

means for exhausting a thermally-controlled inflating medium from the inflatable structure through the base sheet;

an inflation inlet for admitting a thermally-controlled inflating medium into the inflatable structure; and

a drape, comprising an extension of the base sheet.

The references of record relied upon by the examiner as evidence of obviousness are:

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|---------------------------------|-----------|---------------|
| Kliesrath | 2,110,022 | Mar. 1, 1938 |
| Kintner | 3,243,827 | Apr. 5, 1966 |
| Augustine et al. (Augustine) | 4,572,188 | Feb. 25, 1986 |

THE REJECTIONS

Claims 26 through 32, 34, 36 through 40, 42 through 49, 51 through 59, 61 through 70, 72 through 78 and 80 stand rejected under 35 U.S.C. § 103 as unpatentable over Kliesrath in view of Augustine. According to the examiner, Kliesrath shows an inflatable thermal blanket formed by lower layer 54 and an upper layer comprising the bottom sheet of bag 56. The portion of the blanket extending beyond the bag body 56, is considered the drape

portion. The examiner states that Kliesrath lacks only the attachment of the base sheet and the overlying material sheet at a plurality of locations. The examiner is further of the opinion that Augustine teaches attaching the base sheet and overlying sheet at a plurality of locations. Therefore, the examiner has concluded that it would have been obvious to have provided Kliesrath's flat bag 56 with a series of tubes to better keep it a relatively flat structure as opposed to ballooning up when inflated.

Claims 33, 50, 60, and 71 stand rejected under 35 U.S.C. § 103 as unpatentable over Kliesrath in view of Augustine and Kintner. According to the examiner, Kintner shows making V-shape cuts at the corner of bedding to better fit it to a bed. Therefore, the examiner concludes that it would have been obvious to have done the same with Kliesrath's blanket to obtain a similar advantage.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art establishes the unpatentability of all claims on appeal.

Therefore, the rejections of all claims on appeal are affirmed.
Our reasons follow.

The following are our findings of fact with respect to the scope and content of the prior art and the differences between the prior art and the claimed subject matter. Kliesrath discloses, in figures 7 and 8, a thermal blanket with a base sheet formed of lower layer 54 and an upper layer of the base sheet--the bottom sheet of bag 56. An overlying material sheet is formed of the top sheet of bag 56 and upper layer 52. Openings 58 are a means for exhausting a thermally controlled inflating medium. Inlet conduit 60 provides an inflation inlet. The portion of the blanket that extends beyond the bag 56 is considered the claimed drape portion. According to the examiner, Kliesrath lacks only the teaching of attaching the overlying layer to the base sheet at a plurality of points. The examiner is further of the view that Augustine teaches attaching the overlying layer to the upper layer of the base at a plurality of points.

It is our finding that the upper layer of the base sheet of Kliesrath is attached to the overlying layer about the periphery of the inflatable bag, which is to say, at a multiplicity of

points. Accordingly, it is our finding that the Kliesrath figures 7 and 8 embodiment is anticipatory of appellants' claim 26. Consequently, we will affirm the section 103 rejection of claim 26, and the claims falling therewith, namely, 27-32, 34-40, 42-49, 51-59, 61-70, 72-78, and 80, anticipation being the epitome of obviousness. See *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982) quoting *In re Pearson*, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974) (a lack of novelty in the claimed subject matter, e.g., as evidenced by a complete disclosure of the invention in the prior art, is the "ultimate or epitome of obviousness").

With respect to claims 33, 50, 60, and 71, the examiner has cited Kintner for the teaching of making V-shaped cuts at the corner of bedding to better fit the bedding to a bed. We are in agreement that it would have been obvious, at the time of appellants' invention to utilize V-shaped cuts in the corner of Kliesrath's quilt to provide a better fit.

Appellants argue that Kliesrath's quilt is not inflatable. We disagree. It is quite apparent that the bag of Kliesrath is expanded to the condition shown in the figures by inflowing air. This bag is inflatable much as a tire or the like is inflatable.

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The examiner has given the term "inflatable" the reasonable and customary meaning. There is no language in the argued claim that requires any other construction. Furthermore, we disagree with appellants' conclusion that a flexible rubber bag shown as distended in a figure and provided with a pressurized air inlet is not inherently inflatable. The examiner's finding of inflatable is reasonable, and we hold that the burden has shifted to appellants to provide evidence that the bag of Kliesrath is not inflatable. The appellants have not done so.

Appellants argue that Kliesrath has no drape that hangs over a portion of a person's body. On the contrary, Kliesrath is directed to a covering for a body to control the temperature of a person in bed. Col. 1, line 5. The quilt portion that extends past the perimeter of the bag meets all appellants' claim definitions of a drape, as outlined above.

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For the foregoing reasons, the examiner's rejections of all
claims on appeal are affirmed.

AFFIRMED

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| NEAL E. ABRAMS |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
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| CHARLES E. FRANKFORT |) | APPEALS AND |
| Administrative Patent Judge |) | |
| |) | INTERFERENCES |
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| WILLIAM F. PATE, III |) | |
| Administrative Patent Judge |) | |

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